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FILED
DISTRICT COURT OF GUAM

AUG 18 2008 *chs*

JEANNE G. QUINATA
Clerk of Court

10 IN THE DISTRICT COURT OF GUAM

11 UNITED STATES OF AMERICA,)

Criminal Case No. 07-00075

12 Plaintiff,)

13 vs.)

MOTION FOR JUDGMENT OF

14 NATHANIEL DIAZ PUNZALAN)

ACQUITTAL (RULE 29) and

15 Defendant.)

MEMORANDUM IN SUPPORT
OF MOTION

16 COMES NOW, the Defendant, NATHANIEL PUNZALAN, by and through his
17 undersigned counsel of record, and hereby moves this court for an order granting the
18 Defendant's Motion for Judgment of Acquittal pursuant to Rule 29 of the Federal Rules of
19 Criminal Procedure. This motion is based upon the accompanying memorandum of
20 points and authorities and the record herein.
21

22 Respectfully submitted this 18th day of August, 2008.

23 THE LAW OFFICE OF STEPHANIE G. FLORES

24 By: 

25 Stephanie G. Flores, Esq.
26 Attorney for Defendant
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ORIGINAL

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 INTRODUCTION

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4 The Defendant originally brought this motion at the close of all evidence prior to
5 submission to the jury. The Court reserved its ruling and ordered that the instant motion
6 be reduced to writing. This motion is limited to Count III of the Indictment.
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8 FACTUAL BACKGROUND

9 During the trial of this matter there was no evidence regarding whether or not the
10 "firearm" that is the subject of Count III of the Indictment is operable, nor was there any
11 specific testimony regarding whether or not the Exhibit 18-1 meets the definition of
12 "firearm" as defined in connection with 18 U.S.C. §922(g)(1) as charged. The evidence is
13 limited to the fact that Exhibit 18-1 traveled in interstate commerce. Special Agent
14 Quintanilla offered no other testimony as to this Exhibit unlike the detailed testimony he
15 gave as to Exhibit 15. The remaining testimony as to Exhibit 18-1 was limited as to the
16 confiscation of the item and the chain of custody of Exhibit 18-1.
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20 ARGUMENT

21 Rule 29 of the Federal Rules of Criminal Procedure provides:

22 Motion for Judgment of Acquittal (a) Motion before Submission to Jury. Motions for
23 directed verdict are abolished and motions for judgment of acquittal shall be used in their
24 place. The court on motion of a defendant or of its own motion shall order the entry of
25 judgment of acquittal of one or more offenses charged in the indictment or information
26 after the evidence on either side is closed if the evidence is insufficient to sustain a
27 conviction of such offense or offenses. If a defendant's motion for judgment of acquittal at
28 the close of the evidence offered by the government is not granted, the defendant may
offer evidence without having reserved the right.

1 (b) Reservation of Decision on Motion. If a motion for judgment of acquittal is made at the
2 close of all the evidence, the court may reserve decision on the motion, submit the case to
3 the jury and decide the motion either before the jury returns a verdict or after it returns a
4 verdict of guilty or is discharged without having returned a verdict.

5 (c) Motion after Discharge of Jury. If the jury returns a verdict of guilty or is discharged
6 without having returned a verdict, a motion for judgment of acquittal may be made or
7 renewed within 7 days after the jury is discharged or within such further time as the court
8 may fix during the 7-day period. If a verdict of guilty is returned the court may on such
9 motion set aside the verdict and enter judgment of acquittal. If no verdict is returned the
10 court may enter judgment of acquittal. It shall not be necessary to the making of such a
11 motion that a similar motion has been made prior to the submission of the case to the jury.

12 The most direct case regarding the specific issue that is the subject of this
13 memorandum, that is, whether the Government needed to prove that the item in question
14 was operable, is *United States vs. Goodheim*, 686 F2d 776 (9th Cir. 1982). In that case the
15 Ninth Circuit determined that 18 U.S.C. §922 (h) (1) did not specifically include
16 operability as part of the definition of a firearm. Moreover in that case, there was
17 testimony that the firearms in question were test-fired and that that evidence could be
18 relied upon to determine operability. In this case there was no testimony that Exhibit 18-1
19 was test-fired, or that it was operable, or that it could perform as it was designed to
20 perform.

21 Even viewing the evidence in the light most favorable to the Government there is
22 still insufficient evidence to conclude that Exhibit 18-1 is a firearm as defined by the
23 applicable statute.

24 CONCLUSION

25 Based on the foregoing, as well as all previous arguments and any argument that
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1 may be had at any further hearing on this matter, Defendant Punzalan's instant Motion
2 should be GRANTED.
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4 Respectfully submitted this 18th day of August, 2008.

5 THE LAW OFFICE OF STEPHANIE G. FLORES

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7 By:

8 Stephanie G. Flores, Esq.
9 Attorney for Defendant
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